

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:22-CV-00037-KDB-DCK**

CINDY MICHELLE GARDNER,

Plaintiff,

v.

**TOWN OF MOORESVILLE AND
RUSSELL CLARK,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants’ Motion to Dismiss for Lack of Prosecution (Doc. No. 30) and Motion for Summary Judgment (Doc. No. 35). Because Plaintiff has failed to prosecute or otherwise participate in this action since the entry of the Pretrial Order and Case Management Plan in early September 2022, the Court will **GRANT** the motion to dismiss and dismiss this action without prejudice. Defendants’ motion for summary judgment will be denied as moot.

In this action, Plaintiff alleges that Defendants are liable under 42 U.S.C. § 1983 for using unreasonable force (including breaking her arm) to arrest her for the “minor” offense of “Failure to Show Identification.” *See* Doc. No. 9 at ¶¶ 1-4. Defendants deny the allegations. *See* Doc. No. 15. However, the Court cannot address the merits of Plaintiff’s claims because Plaintiff has failed to participate in litigation process since the withdrawal of her counsel and the limited involvement of potential substitute counsel in the parties’ initial attorneys’ conference. *See* Doc. Nos. 21-22. Specifically, Plaintiff, despite several attempts at notice, failed to appear at the parties’ required mediation. *See* Doc. No. 29. Further, the motion to dismiss for lack of prosecution was filed on

March 20, 2023, and Plaintiff has failed to respond, despite a Roseboro Order from the Court (served on Plaintiff by certified mail) ordering a response by April 12, 2023, and informing Plaintiff that the action would likely be dismissed in the absence of a response. *See* Doc. No. 34.

Therefore, because of Plaintiff's failure to prosecute her claims or participate in this action, the Court must grant the motion to dismiss. However, it will do so without prejudice as there is no basis for the Court to decide the merits of Plaintiff's claim.

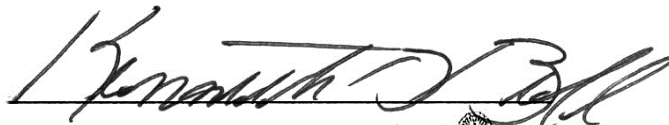
ORDER

NOW THEREFORE IT IS ORDERED THAT:

1. Defendants' Motion to Dismiss for Lack of Prosecution (Doc. No. 30) is **GRANTED**;
2. Plaintiff's claims are dismissed without prejudice;
3. Defendants' Motion for Summary Judgment (Doc. No. 35) is **DENIED** as moot;
and
4. The Clerk is directed to close this matter in accordance with this Order.

SO ORDERED ADJUDGED AND DECREED.

Signed: May 5, 2023



Kenneth D. Bell
United States District Judge

